

PROPOSED AMENDMENTS TO WCAC RULES

The Worker's Compensation Appellate Commission proposes that the following amendments to its Administrative Appellate Procedure Rules be adopted:

(1) Identification of Cross-Appeals

Current rule:

R 418.4 Cross appeals.

Rule 4. (1) A cross appeal shall be received by the commission not later than 30 days after the cross appellant has received a copy of the appellant's brief. The cross appellant shall provide all other parties with copies of the cross appeal and an affidavit that states the date upon which the appellant's brief was received.

(2) A cross appeal shall not be filed before the cross appellant receives a copy of the appellant's brief.

(3) There shall be no delayed cross appeal. An extension of time to file a reply brief does not extend the time to file a cross appeal.

(4) If the appellant's appeal is withdrawn or dismissed, the cross appeal is extinguished.

Proposed Rule Language: R418.4 Rule 4 - Add subsection (5):

(5) A cross-appeal shall be filed on the claim for review form specifically identifying that the party cross appeals the magistrate's decision.

Issue the Proposed Rule Intends to Address: This proposed amendment would clarify the ambiguity present in our existing rules regarding how the parties are to identify the filing of a cross-appeal. This has given rise to situations where parties raise cross-appeal type issues in their responsive briefs but do not identify or file with the Commission a formal, identifiable cross-appeal. Fairness dictates that parties specifically identify cross-appeals to put both the opposing party and the Commission on notice of the cross-appeal.

(2) Filing of Cross Appellant, Appellee and Cross-Appellee Briefs

Current rule:

R 418.4 Cross appeals.

Rule 4. (1) A cross appeal shall be received by the commission not later than 30 days after the cross appellant has received a copy of the appellant's brief. The cross appellant shall provide all other parties with copies of the cross appeal and an affidavit that states the date upon which the appellant's brief was received.

Proposed Rule Language: R 418.4(1) amended to read:

(1) A cross appeal shall be received by the commission not later than 30 days after the cross appellant has received a copy of the appellant's brief. The cross

appellant shall provide all other parties with copies of the cross appeal. "Receipt of appellant's brief" shall be deemed to have occurred 5 days after the date of service/mailing indicated in the proof of service filed by the appellant with the Commission.

Current rule:

R 418.6 Briefs; titles; filing.

Rule 6. (1) A brief shall be entitled "Appellant's Brief," "Appellee's Brief," "Cross Appellant's Brief," or "Cross Appellee's Brief" or shall be otherwise appropriately designated.

(2) An appellant's brief shall be filed with the commission not more than 30 days after a transcript is filed. Where there are multiple transcripts, the 30-day period begins to run when the last transcript is received by the commission.

(3) A cross appellant's brief shall be filed with the commission not more than 30 days after the cross appellant receives a copy of an appellant's brief.

(4) An appellee or a cross appellee need not file a brief; however, if the appellee or the cross appellee wishes to file a brief, the appellee shall submit the brief to the commission within 30 days after the appellee receives a copy of the appellant's brief. A cross appellee shall submit a brief to the commission within 30 days after the cross appellee receives the cross appellant's brief.

Proposed Rule Language: R 418.6(3-4) amended and (5) added to read:

(3) A cross appellant's brief shall be filed with the commission not more than 30 days after the cross appellant receives a copy of an appellant's brief. "Receipt of appellant's brief" shall be deemed to have occurred 5 days after the date of service/mailing indicated in the proof of service filed by the appellant with the Commission.

(4) An appellee or a cross appellee need not file a brief; however, if the appellee wishes to file a brief, the appellee shall submit the brief to the commission within 30 days after the appellee receives a copy of the appellant's brief. If the cross appellee wishes to file a brief, the cross appellee shall submit a brief to the commission within 30 days after the cross appellee receives the cross appellant's brief. "Receipt" of all briefs filed pursuant to this subrule shall be deemed to have occurred 5 days after the date of service/mailing indicated in the proof of service filed by the appellant, appellee, cross appellant or cross appellee with the commission.

(5) A proof of service shall be filed with the commission with each brief and served upon all parties or their counsel.

Issue the Proposed Rules Intend to Address: These proposed amendments would clarify the ambiguity in our present rules regarding how to determine the date the cross appellant's, appellee's and cross appellee's briefs are due. The existing rule requires submission of these briefs within 30 days of the time appellee receives appellant's or cross appellant's brief. The Commission has no way to ascertain the actual date of receipt. This amendment will assume appellee receives appellant's brief within 5 days of

the mailing date of appellant's brief (as reflected in the accompanying proof of service). The proposed rule requires appellees' briefs to be filed within 35 days after the proof of service date, effectively granting the parties 30 days in which to file their briefs. The Commission will then be in position to determine the timeliness of cross appellant's, appellee's and cross appellee's briefs. Subrule (5) has been added to require that the parties file a proof of service with all briefs filed with the Commission. This will give the Commission an objective basis to gauge the starting point of the 35 day filing period. Should circumstances arise which unforeseeably extends the above filing time, the appellee or cross appellee may request from the Commission an extension of time for sufficient cause shown pursuant to Rule 8.

(3) Motion Practice

Current rule:

R 418.7 Motion practice.

Rule 7. (1) All motions shall be in writing.

(2) A party who files a motion shall provide all other parties with copies of the motion and file proof of service with the commission.

(3) A party has 14 days from the date the motion was filed to respond to the motion.

Proposed Rule Language: R418.7 Rule 7 - Add subsection (4):

(4) Any motion or response to a motion representing the existence of facts shall be accompanied by an affidavit from a person with personal knowledge of any facts stated in such motion.

Issue Proposed Rule Intends to Address: This proposed amendment is intended to correct the frequently seen problem when motions filed with the Commission raise assertions of fact as the basis for requesting Commission relief. This most commonly occurs on the issue of 70% benefits. One party claims 70% benefits are not being paid. The other party asserts that the benefits are being paid or, if not, that the failure to pay is based on the other party's failure to perform some condition precedent. In neither case is any factual documentation commonly provided. This proposed amendment will require the moving and responding parties to provide the Commission with the requisite factual foundation to rule on the motion.

Respectfully Submitted,

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WCAC Chairperson